

IN THE MATTER OF	:	BEFORE THE
DANIEL BURNS	:	
	:	HOWARD COUNTY
Appellant	:	
	:	BOARD OF APPEALS
vs.	:	
	:	
ANIMAL MATTERS HEARING	:	
BOARD	:	Case No. BA 685-D
	:	
Appellee	:	

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DECISION AND ORDER

The Howard County Board of Appeals (the “Board”) convened on January 12, 2012 to hear Daniel Burns (the “Appellant”), and the Animal Matters Hearing Board (the “Appellee” or “AMHB”) argue the merits of the Appellant’s appeal of the Animal Matters Hearing Board’s Decision and Order dated August 1, 2011 (“D & O”), which affirmed Civil Citation and Cease and Desist Order No. 10449 in Case No. 11-034.

The Appellant was represented by Damani K. Ingram, Esquire. The Appellee was represented by David Moore, Senior Assistant County Solicitor. Lisa S. O’Brien, Senior Assistant County Solicitor, was the legal advisor for the Board.

All of the Board’s members, James Walsh, Henry Eagles, Maurice Simpkins, John Lederer, and James Howard, were present, and Chairman Walsh presided.

The Howard County Charter, the Howard County Code, the D & O, file and transcript of the AMHB in Case Number 11-034, the petition of the Appellant, the Memorandum of the Appellant filed on October 11, 2011, and the Memorandum of the Appellee filed on December 9, 2011, were incorporated into the record by reference.

As a preliminary matter, the Board noted on its own accord that, contrary to the Board’s Rules of Procedure in Howard County Code, Section 2.210(b)(3), the Memorandum of the Appellee was filed more than fifteen (15) days after the date of the Appellant’s Memorandum. After hearing argument on the issue of the timeliness of the Appellee’s Memorandum from the

Appellee and Appellant, the Board concluded the late filing of the Appellee's Memorandum was not prejudicial to the Appellant, and voted unanimously to proceed and hear the appeal.

This case is an appeal on the record of the AMHB and the hearing was conducted in accordance with Howard County Code, Section 2.210(b) of the Board's Rules of Procedure. The Board heard oral arguments from both Appellant and Appellee and the Appellant had an opportunity to present rebuttal testimony.

In accordance with Howard County Code, Section 2.210(b)(6) of the Board's Rules of Procedure, the Appellant has the burden of establishing that the action by the AMHB was "clearly erroneous, and/or arbitrary and capricious, and/or contrary to law."

The AMHB Decision

On May 17, 2011, the AMHB conducted a hearing for Case No. 11-034 regarding the appeal of Daniel Burns from Civil Citation and Cease and Desist Order Numbers 10448 and 10449 issued on April 8, 2011, upon the affidavit of Theodore Blank. Citation Number 10448 charged Daniel Burns with a violation of Howard County Code, Section 17.302(a)(1), which prohibits a domesticated animal from running at large. Citation Number 10448 charged Daniel Burns with a violation of Howard County Code, Sections 17.304(a)(3) and (5): "A threat to public safety and welfare occurs when a domesticated animal...(3) attacks another domesticated animal, other than an animal at large on the property of the owner of the attacking animal...or (5) approaches people or other domesticated animals in an apparent attitude of attack."

The AMHB found that on March 15, 2011, (1) a dog owned by Daniel Burns was not off the property of its owner and (2) a dog owned by Daniel Burns attacked a dog named "Willie." (D&O, p. 4.) The AMHB dismissed Civil Citation and Cease and Desist Order Number 10448, and affirmed Civil Citation and Cease and Desist Order Number 10489 and imposed a \$50.00 civil monetary penalty.

Standard of Review

The Board of Appeals' standard of review in appeals based on the record is the same standard of review employed by the Maryland Court of Special Appeals and circuit courts in reviewing administrative decisions. *See Mortimer v. Howard Research and Development Corporation*, 83 Md. App. 432, 443 (1990), cert. denied 321 Md. 164 (1990). In making a

determination of whether the AMHB's decision is arbitrary, illegal or capricious, this Board must decide whether the question before the AMHB was "fairly debatable." *Howard County v. Dorsey*, 45 Md. App. 692, 700 (1980), rev'd on other grounds, 292 Md. 351 (1982). An issue is fairly debatable if reasonable persons could have reached a different conclusion on the evidence and, if so, a reviewing court may not substitute its judgment for that of the administrative agency. *Eger v. Stone*, 253 Md. 533, 542 (1969). A decision is fairly debatable if it is supported by substantial evidence on the record taken as a whole. *Dorsey*, 45 Md. App. at 701, quoting *Sedney v. Lloyd*, 44 Md. App. 633, 637 (1980).

Summary of Arguments

The Appellant contends the AMHB's decision that an attack had occurred was based on the fact that Appellant's dog Beaux, is larger and a pit bull and the Appellee's dog, Willie, is a dachshund. In support of Appellant's position, Appellant argues there is no evidence in the record of Beaux barking, growling, baring teeth, biting, or approaching Willie in an aggressive manner and dogs can have contact in a playful manner. Appellant noted that Willie was adopted two weeks prior to March 15, 2011.

Appellee argues that AMHB's decision that an attack occurred is supported by testimony in the record, specifically, the testimony of Mrs. Sanchez and Mr. Blank that Beaux was observed on top of Willie.

Review of AMHB Decision

The sole finding of fact of the AMHB to support its decision to affirm Civil Citation Number 10449 is: "On March 15, 2011, a dog owned by Daniel Burns [Beaux] did attack a dog named "Willie"." Even though Civil Citation Number 10449 was issued for a violation of Sections 17.304(a)(3) and (5) which prohibit a domesticated animal from (i) attacking another domesticated animal or (ii) approaching a person or another domesticated animal in an apparent attitude of attack, respectively; the AMHB did not make any findings of fact or conclusions of law relating to Beaux approaching Willie or a person in an apparent attitude of attack. Accordingly, the only determination to be reviewed by the Board is the AMHB's finding that Beaux attacked Willie on March 15, 2011 in violation of Section 17.304(a)(3). The AMHB did not stipulate what evidence it relied upon to reach its decision nor did the AMHB specify the

definition of attack.

Section 17.304 does not define “attack.” The plain meaning of “attack” per Merriam-Webster consulted by the Board on January 12, 2012 at www.merriam-webster.com is as follows:

“1. to set upon or work against forcefully; 2. to assail with unfriendly or bitter words; 3. to begin to affect or to act on injuriously <plants *attacked* by aphids>; 4. to set to work on <*attack* a problem>; 5. to threaten (a piece in chess) with immediate capture.”

The context of the Section 17.304 is to determine if a domesticated animal is a threat to public safety and welfare.¹ The Board interprets attack, in accordance with the definition, to require an element of force intending to inflict harm or injury. As applied to a dog, the Board finds the following as intentions to inflict harm or injury: a) biting, b) growling, c) barking, and d) baring of teeth. The Board reviewed the record to determine if the record contained facts that there was an “attack” on March 15, 2011.

Based on the Board’s review of the record in this appeal, the Board finds there is not substantial evidence in the record taken as whole to support that AMHB’s finding that there was an attack by Beaux on Willie on March 15, 2011 within the meaning of Section 17.304(a)(3).

The Board notes the AMHB concluded that Beaux did not bite Willie. (D&O, p. 4) The uncontroverted evidence in the record regarding barking or growling is that there was no barking or growling by either dog. The third party witness testified that there was no barking or growling by the dogs. (AMHB Transcript p.14, lines 20 and 21) The property owners’ child testified Beaux did not bark. (AMHB Transcript p.9, lines 7-8) One witness testified “my dog didn’t have any...didn’t touch his dog, didn’t run over his dog.” (AMHB Transcript p. 9, lines 4-5) The third party witness testified that the contact between the dogs was very brief and it “was like, they were like, wrestling together.” (AMHB Transcript p. 14 line 6-7 and 14-15) The testimony of the complainant describes contact between the dogs “as he sort of ran over my dog and beyond my dog.” (AMHB Transcript p. 2, lines 2-3)

¹ The subsequent behavior of a domesticated animal that has been declared a threat to public safety or welfare or potentially dangerous is subject to scrutiny under Howard County Code, Section 17.303.

In reviewing the record taken as whole, the Board finds that the contact between the two dogs, was not contact to be considered substantial evidence to come within the meaning of Section 17.304(a)(3) to sustain a finding that there was an attack by Beaux on Willie on March 15, 2011 which constituted a threat to public safety and welfare. Beaux did not bark or growl at Willie. Willie did not bark or growl at Beaux to fend off an attack by Beaux. Beaux did not bite Willie.

Conclusions of Law

Based upon a review of the record and after consideration of the written and oral arguments of the Appellant and Appellee, the Board finds that there is not substantial evidence that Beaux attacked Willie on March 15, 2011 within the meaning of Section 17.304(a)(3) and the decision of the AMHB is hereby REVERSED and Civil Citation and Cease and Desist Order Number 10489 is hereby DISMISSED.

ORDER

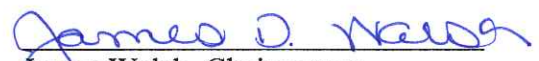

Based upon the foregoing, it is this 31st day of January, 2012, by the Howard County Board of Appeals, **ORDERED:**

That the AMHB's Decision and Order for Case Numbers 11-034 is REVERSED and Civil Citation and Cease and Desist Order Number 10489 is DISMISSED.

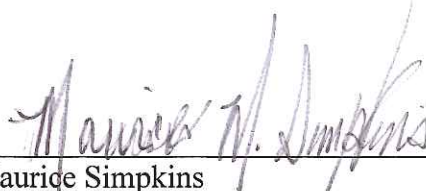
ATTEST:

HOWARD COUNTY BOARD OF APPEALS


Robin Regner, Secretary

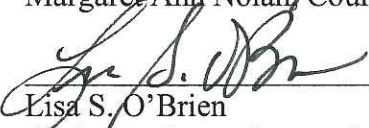

James Walsh, Chairperson

John Lederer, Vice Chairperson

DISSENT
Henry Eagles


Maurice Simpkins


James Howard

PREPARED BY:
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